

UGANDA / JUDGMENT

Tubaire v Uganda (Criminal Miscellaneous Application 59 of 2022) [2023] UGHCCRD 121 (4 August 2023) [2023] UGHCCRD 121

COURT

HC: Criminal Division (Uganda)

BEFORE

Bukirwa, J

CASE / FILE NUMBER

Criminal Miscellaneous Application 59 of 2022

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT JINJA

CRIMINAL MISC. APPLICATION NO. 059 OF 2022

(ARISING FROM CRIMINAL CASE NO. AA28 OF 2022)

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VERSUS

UGANDA ::::::::::::::::::::

BEFORE: HON. LADY JUSTICE FARIDAH SHAMILAH BUKIRWA NTAMBI

RULING

The applicant filed this application for bail under Article 23(6)(a) of the Constitution of the Republic of Uganda, 1995 as amended, Section 14(1) & 15 of the Trial on Indictments Act Cap 23 and Rules 2 & 4 of the Judicature 15 (Criminal Procedure) (Applications) Rules SI 38-8. The application was supported by the applicant's affidavit and raised several grounds which are summarized as follows: -

- 1) The applicant was charged with three counts to wit murder c/s 188 and 189 of the Penal Code Act Cap 120, conspiracy to murder c/s 208 of the Penal Code Act Cap 120 and accessory after the fact to murder c/s 206 of the Penal Code Act Cap 120, and remanded to Kirinya Government Prison.
- 2) The offences with which the applicant is charged are bailable by this Honorable Court.
- 3) The applicant's health requires medical attention to wit surgery, kidney failure and hypertension.

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- 4) The applicant is the sole bread earner of the family with three children, seven orphans and one adult dependent relative of advanced age.
- 5) The applicant is not certain when the trial will commence.
- 6) The applicant has a fixed place of abode within the jurisdiction of this Honorable Court.
- 7) The applicant enjoys the presumption of innocence under Article 28(3)(a) of the Constitution.
- 8) The applicant will abide by all the conditions that may be imposed on him by this Honorable Court.
- 9) It is in the interest of justice to grant the applicant bail. 10

Applicant's Submissions

The applicant was represented by Counsel Ivan Sekyanda, Henry Kyalimpa and Jacob Osillo. Counsel Ivan Semaganda briefly reiterated the contents of the application and the supporting affidavit and argued that the offences for which the applicant is charged are bailable, he has no previous criminal record or pending charges and that he has a permanent place of abode at Triangle Zone, Katende Ward, Bugembe Town Council in Jinja District within the jurisdiction of this Court. He then presented five sureties as follows:

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- 1) MUSANA NASSER, aged 38, a brother-in-law to the applicant, a truck driver at Bugembe Agalyawamu Kazimungi at the shop of the applicant that deals in processing maize and poultry feeds which the surety transports and a resident of Rweta B, Kagwese Ward, Pallisa Town Council in Pallisa District.
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- 2) BATAYIRE FARIDAH YUNUS, aged 36, a house wife to the applicant and a resident of Triangle Zone, Katende Ward, in Jinja City.

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- 3) MUSISI PAUL LUKENGE, aged 49, a farmer and poultry keeper at Katende Ward, Triangle Zone, a long-time friend and fellow resident of the applicant.
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- 4) MENYA ISMAIL, aged 31, a long-time friend and fellow resident of the applicant, a business man dealing in culvert making at Katende.
- 5) ISOBA ROBERT, aged 45, a long-time friend of the applicant, deals in poultry feeds and a worker at Bugembe Maize Mill, the Vice Chairperson of Factory Cell LC I and resident of Factory Cell LC I, Walukuba West Ward, Jinja Southern Division in Jinja City.

Counsel argued that the applicant still enjoys the presumption of innocence and has no intention of interfering with any of the prosecution's witnesses. Secondly, that the applicant will not abscond if released on bail because of his domestic 15 responsibilities at home. He prayed that this Honorable Court finds the sureties substantial and grants the applicant bail on terms that Court deems fit.

Respondent's Submissions

Ms. Gladys M. Nyanzi for the state, objected to the application. She argued that that 20 the applicant's national identity card had not been availed as required under Paragraph 12 of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2022 and no explanation had been given for the omission. Secondly, that the applicant's LC I introduction letter had just been availed and had no stamp. Thirdly, Ms. Nyanzi stated that although the applicant's affidavit is dated 25 27th September 2022 and he was remanded on 5th September 2022, the applicant had presented an introduction letter dated earlier than the date of his arrest meaning that

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the LC 1 introduction letter drafted way before this application was made. She argued that the introduction letter from the LC1 could not be relied on by Court to confirm the applicant's fixed place of abode.

With regard to surety no. 2, the wife of the applicant, there were inconsistencies in \$5\$ the name on the LC I letter and the name on her National ID, which means that these are two different people. Regarding the applicant's medical condition, Ms. Gladys stated that the applicant presented a document from Nile Crescent Health Centre dated 8th July 2022 which indicates that the applicant was suffering from headache, lower abdominal pain and hypertension and made recommendations including 10 reducing salt intake, exercises, monthly

monitoring of blood pressure and sugar levels. Based on this, she contended that there is no evidence by the applicant to prove that these conditions still exist and that the prison facilities have failed to provide the requisite medical attention. She prayed that Court finds that the medical conditions do not exist and if they do, it has not been proved that the prisons 15 authorities cannot manage them.

On the issue of the dislocated knee joint, Counsel for the Respondent argued that no report was submitted regarding the alleged beating and neither did the applicant nor his lawyers present any medical report to verify the same. She prayed that the application be denied.

Applicant's Submissions in Rejoinder

Regarding the issue of the dislocated knee due to beatings, Counsel Ivan argued that this would be indicated on PF 3 and PF 24 copies of which the prosecution had. In respect of the absence of the three medical conditions of the applicant, Counsel contended that under paragraph 11 of the affidavit in reply, the State had conceded

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that exceptional circumstances exist to support the application and therefore the Respondent cannot depart from her sworn statement. In regard to the applicant's National ID, Counsel stated that the arresting officer had retained it. Finally, Counsel clarified that the LC I letter introducing the 2nd surety is the letter dated 24th January 2023. Thereafter, Mr. Paul Lukenge Musisi who was present in Court, clarified that all the introduction letters were authored, signed and stamped by him as the Chairperson of LC I Triangle Zone in Jinja City.

Decision of Court

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- The right to apply for bail is a fundamental right guaranteed under Article 23 (6) of 10 the Constitution of the Republic of Uganda, 1995 as amended and Section 14 and 15 of the Trial on Indictments Act. The main purpose of bail is to uphold one's right to personal liberty, premised on the presumption of innocence stipulated under Article 28(3) of the Constitution. See Nalongo Nazziwa Josephine vs Uganda Supreme
- Court Criminal Appeal No. 035 of 2014. The purpose of bail is to ensure that the 15 applicant appears to stand trial, without the necessity of being detained in custody during the period of trial. See Col. (Rtd) Dr. Kizza Besigye Vs. Uganda Criminal Application No. 83/2016. It is important therefore that the applicant confirms his fixed place of abode and presents sound sureties who will ensure his attendance in court and who can be called upon in the event that he absconds. 20

As such, a bail applicant must not be deprived of his or her freedom unreasonably or as a punishment where they have not been proved guilty by a competent court of law. In all instances, the power to grant or refuse bail is at the discretion of Court. In this respect, Article 23(6)(a) of the Constitution, Section 14(1) of the Trial on Indictments Act Cap 23 and Paragraph 5(d) & (e) of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions 2022 enjoins this Court to

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exercise its discretion to grant bail on such terms and conditions as the court considers reasonable.

Specifically, Section 15(4) of the TIA provides the factors to be taken into account while considering whether or not the accused is likely to abscond. In such cases, the primary concern of Court is whether the applicant will return to court to answer the charge if released on bail. This is determined considering two aspects. First is whether the applicant has sound sureties within the jurisdiction to undertake that the accused shall comply with the conditions of his or her bail. Secondly is whether the applicant himself has a fixed place of abode within the jurisdiction of Court.

The factors to be relied upon to assess the suitability of a surety are contained in Paragraph 15 of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2022 and include the age of the surety, work and residence of the surety, character and antecedents of the surety, relationship to the accused and any other factors that court deems fit. Sureties are also required to provide copies of their National IDs and introduction letters from the LC I Chairperson where the surety is ordinarily resident. The importance of these two documents is to determine the identity and actual place of residence of the surety for purposes of ensuring that that surety fulfills his/ her obligations to Court. I will use these criteria to assess the suitability of the sureties.

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This Court takes cognizance of the importance of the requirement for the accused to have a fixed place of abode within the jurisdiction of Court before bail can be granted. This place of abode must be certain, for only then can the applicant be traced if he/ she absconds. This is normally proved through confirmation from the area Chairperson LC I. In this case, the applicant presented an introduction letter from

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the Chairperson LC I confirming that he is a resident of Triangle Zone, Katende Ward, Jinja North Division in Jinja City. Regarding the Respondent's objection to the application that the LC1 introduction letter presented by the applicant should not be relied on to confirm his fixed place of abode reason being that it was dated earlier (4th April, 2022) having been used to

recommend the applicant as a surety for Issa Malole, the applicant's brother, I disagree with the Respondent in this respect since this introduction letter confirms the applicant's fixed place of abode and no contrary evidence was presented by the Respondent. I observed another introduction letter dated 24th January, 2023 from the LC1 Chairperson of Triangle Zone, Katende Ward, Jinja North Division, Jinja City in respect of the applicant. This document completely waters down the Respondent's earlier argument that the applicant has no introduction letter confirming his fixed place of abode. Further, Mr. Paul Musisi Lukenge, the LC1 Chairman of the applicant's residential area is not only a surety for the applicant but also confirmed that all introduction letters in this matter were authored by him. I am persuaded by the decision of the Honorable Lady Justice Eva K. Luswata in the case of Lumala David vs Uganda Misc. Application No. 037 of 2016 wherein she found merit with ascertaining a fixed place of abode from the LC I introduction letter. I find this letter dated 24th January 2023 sufficient to confirm the applicant's address of residence for purposes of enforcing the bail conditions in case bail is granted.

In addition, the applicant presented five sureties. First, was Mr. Musana Nasser, his brother-in-law and a resident of Rweta B, Kagwese Ward, Pallisa Town Council in Pallisa District. A copy of his National ID and an introduction letter from the LC I Chairperson are on record. Court is convinced that he will be able to compel the applicant to attend Court. The second surety was Ms. Batabayire Faridah Yunus, the house wife to the applicant for the past 10 years. However, no evidence was adduced

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to prove this relationship. Whereas her copy of the National ID was filed on record, her introduction letter is marred by inconsistencies which go to the root of its validity. The name stated therein is different from the name on her National ID. It's neither on the headed paper nor stamped. Its authenticity is questionable and Court

- cannot rely on it. Therefore, Court finds this surety unsuitable to stand surety for the $\overline{5}$ applicant. The third surety was Mr. Musisi Paul Lukenge, the Chairperson LC I of the applicant's village of residence and his friend. A copy of his National ID and an introduction letter are on record. This surety is the applicant's LC I Chairman. Court finds him suitable to stand surety for the applicant. The fourth surety presented
- before this Honorable Court was Mr. Menya Ismail who is a friend of the applicant. 10 A copy of his National ID and an LC I introduction letter in respect of his residence are on record as proof of his residence in the same village as the applicant. Court finds him suitable and capable of compelling the applicant to adhere to his bail conditions. Lastly was Isoba Robert, a long-time friend of the applicant for over 15

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years and the Vice Chairperson of Factory Cell LC I in Jinja Municipality. A copy of his National ID and an LC I introduction letter in respect of his residence are also on record. Court finds him suitable to stand surety for the applicant. Therefore, I find that the applicant presented four suitable sureties; Mr. Musana Nasser, Mr. Musisi Paul Lukenge, Mr. Menya Ismail and Mr. Isoba Robert.

Having cautiously weighed all the factors in this application, I find that the applicant has presented three substantial sureties with capacity to compel him to adhere to the bail terms. The said sureties were examined by Court and found to understand their responsibilities to Court and the repercussions of failing to execute the same. In addition, he has a permanent place of abode within the jurisdiction of this Court. Accordingly, I am inclined to release the applicant on bail under the following

conditions:

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- 1) Cash bail of Uganda Shillings 1,000.000 (one million shillings) only.
- 2) Non cash bail against each one of the four sureties of Uganda Shillings 4,000,000 (four million shillings) only.
- 3) The applicant shall report to the Deputy Registrar of this Court on the second Wednesday of each month with effect from 13th September, 2023.

Any contravention of the above terms will result into automatic cancellation of the bail granted.

I so order.

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FARIDAH SHAMILAH BUKIRWA NTAMBI **JUDGE** Ruling delivered in open court on 4th August, 2023.

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Prepared on 13 October 2026 · Esheria